IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
S.B. Civil Second Appeal No.563/2004

Gram Panchayat Pawta, Panchayat Samiti,
Virat Nagar, District Jaipur
...defendant-appellant
Versus
Ashok Son of Kalu Ram & Others
...plaintiff-respondents

Date of Order ::: 10.11.2006

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Ajay Gupta, Counsel for defendant-appellant
Shri Ajeet Bhandari, Counsel for plaintiff-respondents
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By the Court:-

Heard learned counsel for the parties.

The plaintiff-respondents filed a suit for declaration, mandatory injunction and possession in the lower court, which was decreed. The judgment and decree passed by the lower court has been affirmed by the first appellate court also.

The learned counsel for the appellant contended that the finding of both the courts below is based on evidence of the plaintiffs only as no reasonable opportunity was afforded to the defendant-appellant to lead evidence on its behalf.

I have considered the submissions of learned counsel for both the parties in the light of judgment

and decree passed by both the courts below. The learned first appellate court, in Para 7 of its judgment, recorded a finding that the suit was fixed for defendant's evidence continuously for more than three years from the year 1997 to 2000 and only on 8th of March, 2000, the evidence was closed. The opportunity of evidence was given on two occasions on costs also, but the evidence was not produced on behalf of the defendant.

After considering all the facts and circumstances of the present case I do not find any force in the contention of the learned counsel for the appellant about not giving a reasonable opportunity to lead evidence to the defendant-appellant. After considering the submissions of the learned counsel for both the parties I find that the controversial issues involved in the present case are relating to question of fact and there is concurrent finding of fact by both the courts below, which cannot be interfered with by this court in second appeal under Section 100 of the C.P.C.

No substantial question of law is involved in this second appeal and the same is dismissed at admission stage with no order as to costs.

(Narendra Kumar Jain) J.

//Jaiman//